Permit No.: NDR32-0000

Effective Date: July 1, 2004

Expiration Date: June 30, 2009

AUTHORIZATION TO DISCHARGE UNDER THE

NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

facilities both qualifying for and satisfying the requirements identified in Part I of this permit

are authorized to discharge storm water associated with mining, extraction or paving material preparation activities

to waters of the state

in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

This permit and the authorization to discharge shall expire at midnight,

June 30, 2009.

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Dennis R. Fewless, Director
Division of Water Quality

_____

Date

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PART I - PERMIT COVERAGE

A. Eligibility and Coverage

1. This permit applies to all areas within the jurisdiction of the state of North Dakota.

2. This permit applies to discharges composed (either in whole or in part) of storm water associated with industrial activity as defined in 40 CFR 122.26(b)(14) from any of the following:

   a. Operations involved in mining or extracting activities, including processes to prepare materials for use, SIC Codes between 12 and 14;

   b. Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611, 2951 and some 327;

   c. Equipment storage and maintenance yards supporting the industrial categories identified above.

3. Certain non-storm water discharges from facilities covered by this permit and meeting the requirements specified in Part II.A.

B. Limitations on Coverage

This permit does not cover the following activities:

1. Storm water discharges from facilities or activities subject to a nationally established effluent limitations guideline or other performance standard under 40 CFR subchapter N.

2. Discharges or releases that are not storm water except those non-storm water discharges authorized under Part II.A.

3. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a SWPP plan that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, you must incorporate into their SWPP plan any conditions applicable to their discharges necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to the project's discharges, the permittee(s) must incorporate that allocation into its SWPP plan and implement necessary steps to meet that allocation.

4. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).

5. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA), it is your responsibility to ensure the project and resulting discharges comply with the respective requirements.

6. Storm water discharges that the Department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards.

C. **Obtaining Coverage and Authorization Effective Date**

1. To obtain authorization under this general permit for storm water discharges you must submit a complete application and develop a Storm Water Pollution Prevention (SWPP) plan in accordance with Part II.C of this permit. A plan must be in place as a condition of this permit and a copy of the plan must be retained by the operator of the facility. A copy of the plan must be submitted with the application for certain facilities as described in Part I.D.3.

2. Permit coverage will become effective 7 days after you submit a complete application unless otherwise notified by the Department (based on the earlier of postmarked date or department date-stamp).

3. Upon the effective date of permit coverage you, as the permit applicant, are authorized to discharge storm water from eligible activities under the terms and conditions of this permit.

D. **Application Contents**

1. You may use a Notice of Intent (NOI) form (or photo copy thereof) to complete your application. The NOI form (SFN 18686) is available at *http://www.health.state.nd.us/wq/Storm.*

2. The application shall contain, at a minimum, the following information:

   a. Name and mailing address of the owner or operator
   b. Contact name and phone number
   c. Name of facility or site
   d. A brief description of the nature of business or activity
   e. Standard Industrial Classification (SIC) Code
   f. Location of the site(s), including the county, latitude and longitude or township, range, section, and 1/4 section
   g. Name of receiving water(s) or the name of the receiving municipal storm sewer system and receiving water(s)
   h. The signature of the applicant(s), signed in accordance with Signatory Requirements of this permit.

3. You must include a copy of the Storm Water Pollution Prevention (SWPP) plan if either of the following apply:

   a. The facility will occupy 50 acres or more (area dedicated to industrial activities); or
   b. The facility will have a discharge point located with 2000 ft of, and flow to, a water body listed as impaired under section 303(d) of the Federal CWA due to sediment or parameters associated with sediment transport (see 303(d) List on Department's web site).

4. An operator of multiple temporary or portable operations may submit a single application for such activities. The operator must provide a copy of the SWPP plan for any locations that meet the criteria listed in previous item (Part I.D.3) prior to beginning operations on the site.

5. Operators of oil or gas extraction facilities (SIC codes 13) that experience a storm water discharge resulting in or contacting a reportable quantity release of oil or hazardous substance (release for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, 40 CFR 302.6) shall submit a NOI within 15 days of becoming aware of the release. As provided in 40 CFR 122.26 (c)(1)(iii), oil and gas extraction facilities that have not discharged a reportable quantity (RQ) of oil

or hazardous substances are not required to apply for a storm water permit. Permit coverage for equipment storage and maintenance facilities of the field services sector (SIC 1381-1389) may be requested to manage potential impacts to surface waters.

6. Local agencies may operate a local storm water management program or other sediment and erosion control program. The local authority may require that a copy of the application be provided to them for review and approval.

E. **Termination of Coverage**

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) or other written request identifying the facility, reason why the permit is no longer needed and signed in accordance with Part IV-E of this permit. Compliance with the conditions of this permit is required until a NOT is submitted.

2. Permittees may only submit a NOT after one of the following conditions have been met:

   a. All storm water discharges associated with industrial activity have been eliminated and final stabilization (see definitions) has been achieved on all portions of the site for which the permittee is responsible.

   b. The discharges were from an inactive coal mining operation no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released; or a non-coal mining operation which has been released from applicable State or Federal reclamation requirements after December 17, 1990.

   c. The discharges were from an oil or gas extraction facility where the areas affected by a reportable quantity release that resulted in coverage under this permit have been reclaimed and the facility has operated satisfactorily under a storm water pollution prevention plan for a minimum of three years.

   d. Another operator/permittee has assumed control over all areas of the site that has not been finally stabilized in accordance Transfer provisions (Part IV.M) of this permit.

PART II - STORM WATER DISCHARGE REQUIREMENTS

A. **Prohibition on Non-Storm Water Discharges**. The discharge of wastewater from processing operations or sanitary facilities is not authorized by this permit. The following non-storm water discharges may be authorized if the non-storm water sources are identified in the SWPP plan with a description of the pollution prevention measures to be implemented: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

B. **Releases in Excess of Reportable Quantities**. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302. Any release of a hazardous substances, including a release in a storm water discharge, must be reported to the agencies identified in Part IV F. The potential discharge of hazardous substances in storm water discharges shall be minimized by including measures in the SWPP plan to prevent and respond to releases of hazardous substances. Should a reportable quantity release occur, the SWPP plan shall be revised to prevent the reoccurrence of such a release.

C. **Storm Water Pollution Prevention Plans**. All facilities covered by this permit shall prepare and implement Storm water Pollution Prevention (SWPP) plans. The SWPP plan and revisions are subject to review by the Department. The major objectives of the plan are to identify potential sources of storm water pollution associated with industrial activity and ensure that practices are implemented to minimize the contribution of pollutants. Storm water management measures developed under other regulatory programs can be included in the SWPP plan or incorporated by reference.

The Storm Water Pollution Prevention Plan shall include the following:

1. **Site Description.**

   a. Provide a description of the type of activity conducted at the facility.

   b. A site map indicating drainage patterns, the outline of the drainage area for each storm water outfall, areas used for storage or disposal of materials, and any existing or planned structures to reduce storm water contamination. Clearly identify property boundaries, natural drainage ways receiving discharges, section, township, and range or lines of latitude and longitude. The map or drawing must be of suitable scale and quality to show the required information.

   c. Identify the individual(s) responsible for implementing, maintaining and revising the SWPP plan.

2. **Description of Potential Pollutant Sources**.

   a. Identify materials that are processed, handled, stored, or disposed at your site that have the potential to be released with storm water.

   b. An assessment of various sources at the site that could contribute pollutants to storm runoff. Each of the following shall be evaluated for the reasonable potential to contribute pollutants: loading/unloading operations, outdoor storage, disposal and processing activities, significant dust generating activities and disturbed area vulnerable to erosion. Factors to consider in assessing potential sources are: the nature and quantity of material, degree of exposure to storm water, history of spills or leaks, and any measures in place to control storm water.

   c. Identify sources of non-storm water discharges that may be present and controls used to minimized the impact of the source. If the non-storm water discharge is not authorized include measures to remove the illicit discharge.

3. **Storm Water Controls**. The plan shall describe the existing or planned controls for each source or operation that may contribute pollutants in storm runoff. A combination of Best Management Practices (BMPs) and structural controls must be implemented as appropriate to reduce pollutant contributions in storm water. Such practices include:

   a. Good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals and parts must be handled properly to minimize the exposure to storm water. This includes measures to reduce and clean up vehicle tracking of sediment off-site and generation of dust.

   b. Preventive maintenance practices must be provided for the inspection and maintenance necessary to ensure the proper operation of storm water management devices (oil water separators, catch basins, and silt fences) as well as equipment used or stored at a site.

c. Spill prevention and response procedures must developed where potential spills can occur. Where appropriate, specific handling procedures, storage requirements, spill containment and cleanup procedures shall be identified.

d. Employee training informs personnel of their responsibility in implementing the practices and controls included in the plan such as spill response, good housekeeping, and sediment control - practices.

e. Sediment and erosion controls must be implemented on areas of operations vulnerable to erosion. The plan shall describe the appropriate control measures and when they will be implemented during the process for each major phase of site activity (such as clearing, grading for new mine areas or building support features). The description and implementation of controls shall address the following minimum components:

(1) Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.

(2) Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.

(3) All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

(4) If sediment escapes the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.

f. Storm Water Management. The plan shall include a description of practices that will be installed during the construction phase of a new site or expansion to control pollutants in storm water discharges occurring after construction operations have been completed or incorporated into the reclamation of a temporary site. Such practices may include: storm water ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems which combine several practices. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

4. **Maintenance**. All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate as appropriate the maintenance or clean out interval for sediment controls. If site inspections, required in this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.

5. **Inspections**. The plan must provide for site inspections to monitor the condition of storm water discharge outlets and effectiveness of BMPs. The permittee shall ensure that personnel who are familiar with permit conditions and the proper installation and operation of control measures conduct an inspection of the site according to the following schedule:

   a. Active fixed location facilities, shall conduct inspections within 48 hours or as soon as conditions allow following storm events of one (1) inch or more in 24 hours, with at least one inspection during a 6 month period when no such events occur. The storm event inspections are not required for facilities conducting an approved storm water sampling program.

   b. Operators of temporary or portable facilities (sand and gravel, batch plants) shall conduct inspections on a monthly basis while the operation is active and once every 6 months until final stabilization is achieved after ceasing operations.

   c. Inactive operations shall be evaluated, at a minimum, once in three years by a qualified individual with experience in surface water pollution issues (i.e. environmental, erosion control, reclamation or engineering). The objectives of such evaluations are to: 1) assess the stability and performance of existing runoff controls, and 2) identify areas adversely impacted by runoff from the site.

   The inspection shall include discharge outlets from: disturbed areas of the site that have not reached final stabilization, areas used for storage of materials, structural control measures, and vehicle maintenance areas. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. The erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly and in serviceable condition. A record of inspections shall summarize the scope of the inspection, major observations relating to the SWPP plan, the date and name of personnel making the inspection. If necessary, the SWPP plan shall be revised based on the observations and deficiencies noted during the inspection.

6. **Plan Review and Revisions**.

   a. The plan shall be signed in accordance with the signatory requirements, Part IV-E, and retained on-site for the duration of activity at the permitted location.

   b. The permittee shall make plans available upon request to the Department, EPA, or, in the case of discharges to a municipal separate storm sewer system, to the operator of the municipal system.

   c. The permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in storm water.

   d. Oil or gas extraction facilities which have a discharge of a reportable quantity of oil or hazardous substance after the effective date of this permit shall submit a SWPP plan and provide for compliance with the terms of the plan within 30 days of the operator becoming aware of the release.

D. **Additional Terms and Conditions**

1. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with the appropriate BMPs, such that the discharge does not adversely affect the receiving water or downstream landowners. The Permittee(s) must operate the discharge to minimize the release of sediment and provide energy dissipation measures to adequately protect the outlet from erosion. The dewatering is limited to storm water and small amounts of ground water that may collect on a site. A separate permit must be obtained for the release of water from other sources such as sand and gravel wash plants.

2. Concrete wash water shall not be discharged to waters of the state, storm sewer systems or allowed to drain onto adjacent properties.

3. Bulk storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state.

4. Storm water discharges from construction related activity inherent to the normal operation and expansion of covered facilities are covered by this permit. Such activities shall be conducted in accordance with the practices identified in the SWPP plan. Any newly constructed storm water discharges associated with industrial activity shall be added to the SWPP plan or, if appropriate, covered by another applicable NDPDES permit.

PART III - SELF-MONITORING AND REPORTING

A. **Non-Sampling Reporting Requirements**

1. Annual Inspection Summary.

   A summary of the inspections outlined in the SWPP plan requirements (Part II.C.5) shall be provided on an annual basis. The summary shall consist of a listing of all incidents of sediment or significant material residue accumulation, or erosion due to storm water discharges observed during the calendar year. The summary shall also include the inspection date, outfall identification or location of incident, description of incident, estimated quantity of material or size of area affected, brief explanation of potential cause and remedial actions taken.

2. Annual Location Record.

   Operators of portable or temporary facilities (such as sand and gravel operations, concrete or asphalt batch plants) shall maintain a location record that shows the location where they operated facilities. The location record shall include following:

   a. Permit number
   b. Name and mailing address of the owner or operator
   c. The site or plant name or number
   d. Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section)
   e. Start date of each site
   f. The estimated area of total disturbance in acres of each site
   g. Name of water bodies within 2000 feet that may receive drainage from the site
   h. Status of each site (active, reclaiming, inactive)
   i. Date of final stabilization or when contoured to contain all storm water discharges

3. Annual Report Submittal.

   A copy of the Location Record and/or Inspection Summary shall be submitted to the Department by January 31 of each year, covering the activities occurring during the preceding calendar year (January 1 through December 31). The report shall be submitted to the Department at the following address:

   North Dakota Department of Health
   Division of Water Quality
   PO Box 5520
   Bismarck, ND 58506-5520

B. **Sampling Self-Monitoring Requirements**

1. Facilities are not required to conduct sampling on storm water discharges except for the following circumstances:

   a. The Department directs the permittee, by written notification, to conduct sampling at a facility covered by this permit. Instances where sampling could be required include, but are not limited to, any of the following: 1) analytical data is needed to estimate water quality impacts, 2) discharges are shown to be generally of poor quality, or 3) the SWPP plan is delinquent or determined to be insufficient.

   b. A permittee can sample storm water discharges as an alternative to reduce inspection requirements described in this section. Any request to conduct sampling in lieu of inspections shall be made in writing and approved by the Department. Permittees granted approval during prior versions of this permit may continue their sampling program.

2. The storm water sampling, where required, must conform to the requirements, procedures and conditions contained in appendix 2.

C. **Reporting.** Monitoring results shall be summarized and reported on Discharge Monitoring Report forms. If no discharge occurs during a reporting period, "no discharge" shall be reported. Each report shall cover a the calendar year. Monitoring reports must be postmarked by the last day of the month following the end of each annual reporting period (January 31). Signed copies of these, and all other reports required herein, shall be submitted to the Department at the following address:

   North Dakota Department of Health
   Division of Water Quality
   P.O. Box 5520
   Bismarck, ND 58502-5520

PART IV - STANDARD CONDITIONS

A. **Duty to Comply**. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. **Operation and Maintenance**. The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the

permittee to achieve compliance with the terms and conditions of this permit and with the requirements of the storm water pollution prevention plans. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. **Duty to Provide Information**. The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that they failed to submit any relevant facts or submitted incorrect information in a permit application or any report, they shall promptly submit such facts or information.

D. **Records Retention.** All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

E. **Signatory Requirements**. All applications, reports or information submitted to the Department shall be signed and certified.

1. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described above and submitted to the Department; and

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under item 2 above is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

F. **Immediate Notification**. The permittee shall report any noncompliance or discharge which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII, Emergency Response Branch at (303) 293-1788 and the State of North Dakota, Division of Emergency Management at (701) 328-2121. In addition, a written submission to both the Department and EPA shall be provided within five days of the time that the permittee became aware of the circumstances. The submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

G. **Bypassing**. Any bypass is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage and there were no feasible alternatives to the bypass. The permittee shall provide notification of unanticipated bypasses as may be required by Part IV.F, Immediate Notification. If, for other reasons, a bypass is considered necessary, a request to bypass shall be submitted, at least 15 days in advance if possible, to the Department. No bypass of this type shall occur until permission has been obtained from the Department.

H. **Upset Conditions**. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as may be required under Part IV.F, Immediate Notification; and

4. The permittee complied with any remedial measures required under Part IV.I, Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. **Duty to Mitigate**. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. **Removed Materials**. Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard.

K. **Right of Entry**. The permittee shall allow Department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit. For facilities which discharge to a municipal or other separate storm sewer, this shall also pertain to authorized representatives of the municipal operator or the separate storm sewer receiving the discharge.

L. **Availability of Reports**. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

M. **Transfers**. This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The Department may require the new operator to file a NOI or apply for and obtain an individual NDPDES permit as stated in Part I.D. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.

N. **New Limitations or Prohibitions**. The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

O. **Permit Actions**. This permit may be modified, revoked and reissued, or terminated for cause. Also, if there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or coverage under an alternative general permit in accordance with this Part. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. The following pertains to individual or alternative general permits:

1. The Department may, at any time and by written notification only, require any person authorized by this permit to apply for and obtain either an individual NDPDES permit or to seek coverage under an alternative NDPDES general permit. Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit, or filing a Notice of Intent to be covered under an alternative NDPDES general permit.

2. When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit. When an individual NDPDES permit is denied to a person otherwise subject to this permit, or the person is denied for coverage under an alternative NDPDES general permit, the applicability of this permit remains in effect, unless otherwise specified by the Department.

P. **Need to Halt or Reduce**. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

Q. **State Laws.** Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

R. **Oil and Hazardous Substance Liability**. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

S. **Property Rights**. The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

T. **Severability**. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

U. **Renotification.** Any request to retain coverage under a renewal of this permit shall be made in writing to the Department at least 15 days prior to the expiration date of this permit. Upon request by the Department, a new Notice of Intent shall be submitted.

PART V - DEFINITIONS

“303d List” or Section 303d List” means a list of North Dakota’s water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303d of the Clean Water Act. A copy of the list is available on the state’s web site at:
http://www.health.state.nd.us/wq/sw/Z7_Publications/A_Publications.htm

"BMP" or "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Department" means the North Dakota Department of Health, Division of Water Quality.

"Energy Dissipation" means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

“Final Stabilization” means that:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

2. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.

3. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ‘‘waters of the state,’’ and areas which are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (1) or (2) above.

"Grab" sample, for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

"Inactive mining" or "inactive oil and gas operations" means areas, on or beneath lands, which were previously disturbed in activity related to the extraction, removal or recovery of coal, minerals, ores, or oil and gas from their natural deposits and were not otherwise subject to runoff controls or reclamation requirements. The term does not include areas of coal mining activity defined as "active mining area" or reclamation area" in 40 CFR 434.11 or areas which have been reclaimed, cleaned up or sealed under applicable SMCRA or equivalent requirements.

“Normal Wetted Perimeter” means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.

“Non-storm water discharges” means discharges other than storm water. The term includes both process and non-process sources. Process wastewater sources that require a separate NDPDES permit include,

but are not limited to industrial processes, domestic facilities and cooling water. Non-storm water sources that may be addressed in this permit include, but are not limited to: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

“Operator” means the owner, party, person, general contractor, corporation, or other entity that has operational control over a facility. The operator is responsible for ensuring compliance with all conditions of the permit and with development and implementation of the “storm water pollution prevention plan”.

"Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

"Stabilized" means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

“Storm Water Associated with Industrial Activity” means storm water runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR § 122.26(b)(14).

"Temporary Erosion Protection" means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Appendix 1 - Guidelines for designing, implementing and maintaining effective erosion and sediment controls

The following practices need to be considered for effective erosion and sediment control:

1) Temporary (or permanent) sediment basins, or equivalent control must be provided where ten (10) or more acres of disturbed area drain to a common location prior to the runoff leaving the site or entering surface waters. The Permittee is encouraged, but not required, to install temporary sediment basins where appropriate in areas with steep slopes or highly erodible soils even if less than ten (10) acres drains to one area. The basins must be provide at least the following:

   The basins shall be sized to provide 3,600 cubic feet of storage below the outlet pipe per acre drained to the basin. Alterative designs may be used which provide storage below the outlet for a calculated volume of runoff from a 2 year, 24 hour storm and provides not less than 1800 cubic feet of storage below the outlet pipe from each acre drained to the basin.

   Basin outlets must be designed to avoid short-circuiting. The basin must be designed with the ability to allow complete basin drawdown (e.g., perforated riser pipe wrapped with filter fabric and covered with crushed gravel, pumps or other means) for maintenance activities, and provide a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.

2) Where the temporary sediment basin is not practical due to site limitations or nature of disturbance (such a developing a road way or initial stripping to build sediment pond or diversion) a combination of measures must be used within the disturbance area and down slope boundaries. In determining whether installing a sediment basin is attainable, the Permittee must consider public safety and may consider factors such as site soils, slope, and available area on site.

3) Provide temporary erosion protection or permanent cover for the exposed soil areas where activities have been completed or temporarily ceased. For those areas with a continuous positive slope within 200 lineal feet of a surface water, temporary erosion protection or permanent cover must be applied with 21 days of completing or ceasing earth moving activities. These areas include pond embankments, ditches, berms and soil stockpiles. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.

4) Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including storm water conveyances such as curb and gutter systems, or conduits and ditches.

5) The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized within 200 lineal feet from the property edge, or from the point of discharge to any surface water. Stabilization should be completed within 24 hours of connecting to a surface water.

6) Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

7) In order to maintain sheet flow and minimize rills and/or gullies, there should be no unbroken slope length of greater than 75 feet for slopes with a grade of 3:1 or steeper.

8) Temporary or permanent drainage ditches and sediment basins that are designed as part of a treatment system (e.g., ditches with rock check dams) require sediment control practices only as appropriate for site conditions.

The following are maintenance and operation considerations for effective sediment and erosion control:

1) All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs. The Permittee(s) must investigate and comply with the following inspection and maintenance requirements:

    1) All silt fences must be repaired, replaced, or supplemented when they become nonfunctional or the sediment reaches 1/3 of the height of the fence. These repairs must be made within 24 hours of discovery, or as soon as field conditions allow access.

    2) Temporary and permanent sedimentation basins must be drained and the sediment removed when the depth of sediment collected in the basin reaches 1/2 the storage volume. Drainage and removal must be completed within 72 hours of discovery, or as soon as field conditions allow access..

2) Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of sediment being deposited by erosion. The Permittee(s) must remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems, and restabilize the areas where sediment removal results in exposed soil. The removal and stabilization should take place within seven (7) days of discovery unless precluded by legal, regulatory, or physical access constraints. The Permittee shall use all reasonable efforts to obtain access. If precluded, removal and stabilization should take place within seven (7) calendar days of obtaining access. The Permittee is responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work.

3) Construction site vehicle exit locations must be inspected for evidence of off-site sediment tracking onto paved surfaces. Accumulations of tracked sediment must be removed from all off-site paved surfaces, as soon as practicable, or if applicable, within a shorter time specified by local authorities.

Appendix 2 - Storm Water Sampling Requirements, Procedures and Conditions
Applicable to facilities conducting a sampling based monitoring program.

1. **Sample frequency and test parameters.** If a permittee is notified that sampling is required or obtains approval to conduct sampling in lieu of inspections, the sampling shall, at a minimum, consist of semiannual grab samples for the following parameters:

    a. Oil and Grease (visual), if a sheen be observed, then a grab sample from the surface shall be collected and analyzed
    b. pH (S.U.)
    c. Total Suspended Solids (mg/l)
    d. Total Phosphorus (mg/l)
    e. Total Kjeldahl Nitrogen (mg/l)
    f. Total Nitrates (mg/l)
    g. Any pollutant that is limited in an effluent guideline applicable to the facility.

2. **Sample procedures.**

    a. All samples and measurements taken shall be representative of the discharge. Samples shall be collected from discharges resulting from a storm event that is greater than 0.1 inches in magnitude and that has occurred at least 72 hours from the last 0.1-inch or greater storm event which generated runoff. Snowmelt which generates runoff considered to be equivalent to or greater than a 0.1-inch precipitation event qualifies for sampling purposes. However, no more than one sample per year for each sampling site can be from a snowmelt event.

    b. For discharges from holding ponds or other impoundments with a 24-hour or greater retention capability, grab samples of the discharge may be obtained at any time. For all other discharges, grab samples shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample may be taken during the first hour of the discharge, provided the permittee submits a description of why the grab sample could not be obtained during the first 30 minutes with the DMR.

    c. For storm events sampled, the permittee shall record the date and duration (in hours) of the event, rainfall amount or estimates (in inches) of the event, the approximate duration since the end of the last 0.1-inch or greater storm event which generated runoff, and an estimate of the size of the drainage area. The information shall also be included on DMRs. The permittee shall have the option of maintaining a rain gauge at his site or utilizing the nearest National Weather Service rain gauge station. Any gauge station used shall be located within 10 miles of the storm water discharge.

3. **Impractical or adverse conditions**. When a permittee is unable to collect samples due to impractical or adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Impractical or adverse climatic conditions which may prohibit the collection of samples include: normal non-working hours, nightfall, or weather conditions that create dangerous conditions for personnel (local flooding, high winds, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impractical (drought, extended frozen periods, etc.).

4. **Representative sampling**. When a facility has two or more outfalls which the permittee believes would discharge substantially identical effluents, based on the features and activities within the areas drained by the outfalls, the permittee may submit a representative sampling plan in which at least 20 percent of all outfalls would be monitored. Permittees wishing to utilize this option shall submit documentation as to why they believe discharges from the sites will be substantially similar and also identify their proposed sampling sites. Upon approval by the Department, the representative sampling plan can be implemented.

5. **Equivalent monitoring plans**. Where appropriate, results for monitoring plans developed for other regulatory agencies or other purposes can be used for the requirements of this permit. The alternative monitoring plans can only be implemented upon written request by the permittee and subsequent written approval by the Department. When it is not feasible to develop a monitoring plan based on the percentage of outfalls, an alternative monitoring plan representative of the features and activities impacting storm water outfalls may be developed. The alternative plan must contain an explanation of why a percentage based plan is impracticable and how the plan is representative of the storm water discharges at the facility.

6. **Test Procedures**. The collection and transportation of all samples shall conform with EPA preservation techniques and holding times. All laboratory tests shall be performed by a certified laboratory in conformance with test procedures pursuant to 40 CFR 136. The method of determining the total amount of water discharged shall provide results within reasonable accuracy.

7. **Recording of Results**. For each sample taken, the name of the sampler, the exact place, and the date and time of the sampling shall be recorded. For each sample analyzed, the name of the laboratory, the name of the analyzer, the analytical techniques used, the test results, and the date and time of the analysis shall be recorded.

8. **Additional Monitoring**. If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with item 6, Test Procedures, shall be included in the summary on the Discharge Monitoring Report.